

**UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JAMIE COPE,

Plaintiff

V.

COMMERCIAL RECOVERY
SYSTEMS, INC.,

Defendant

Case No.: CIV-13-300-C

COMPLAINT AND DEMAND FOR JURY TRIAL

(Unlawful Debt Collection Practices)

COMPLAINT

JAMIE COPE ("Plaintiff"), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against COMMERCIAL RECOVERY SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA")

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. §1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

FACTUAL ALLEGATIONS

11. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff.

12. The alleged debt, an auto loan for a personal vehicle, arose out of transactions, which were primarily for personal, family, or household purposes.

13. Beginning in or around July 2012, and continuing through September 2012, Defendant continuously and repeatedly contacted Plaintiff on her cellular telephone seeking and demanding payment of an alleged debt.

14. During the relevant period, Defendant called Plaintiff, on average, one (1) to two (2) times a day, causing Plaintiff to receive more than twenty (20) collection calls a month.

15. Upon information and belief, Defendant called Plaintiff on a repetitive and continuous basis with the intent of harassing Plaintiff into paying the alleged debt.

16. In addition to the quantity of its calls, Defendant also used the content of its collection calls as a means to harass Plaintiff.

17. For example, on at least one occasion, Defendant's collectors threatened to report Plaintiff to the District Attorney if she did not pay the alleged debt.

1 18. The failure to repay an auto loan is not a criminal offense in the State
2 of Oklahoma.

3 19. Upon information and belief, Defendant made the above threat
4 seeking to take advantage of her lack of knowledge about such things to scare her
5 into paying the alleged debt, knowing Plaintiff had committed no crime and
6 knowing that the District Attorney would have no interest in the situation.
7

8 20. Further, on at least one occasion, Defendant's collector threatened to
9 garnish Plaintiff's wages if she did not make payment on the debt.
10

11 21. At the time Defendant made this threat, it did not have a judgment and
12 could not legally garnish wages.
13

14 22. Upon information and belief, Defendant does not employ attorneys as
15 telephone collectors.

16 23. Upon information and belief, the statements by the collectors were
17 made by laypersons who knew there was no intent to take any of the action
18 threatened.
19

20 24. Most recently, on September 18, 2012, Defendant contacted Plaintiff
21 seeking and demanding payment of the alleged debt.
22

23 25. In its conversation with Plaintiff, Defendant, again, threatened to
24 garnish her wages if she did not make payment on the alleged debt. Defendant
25 knew at the time it made this threat, not only did it not have the intent to take such

1 action, but could not take such action, as there had been no judgment entered
2 against Plaintiff for this debt.

3
4 26. Furthermore, when Plaintiff asked for documentation regarding the
5 alleged debt, Defendant's collector revealed that Defendant was not in possession
6 of any documentation about the validity of the debt, as the collector stated that he
7 would "request it from Santander," but did not know if he "could get [any
8 information]."

9
10 27. Finally, within five (5) days of its initial communication with Plaintiff
11 regarding the alleged debt, Defendant failed to send Plaintiff information regarding
12 her rights to dispute the debt and/or request verification of the debt.

13
14 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION**
15 **PRACTICES ACT**

16 28. In its actions to collect a disputed debt, Defendant violated the
17 FDCPA in one or more of the following ways:

18 **COUNT I**

- 19
20 a. A debt collector violates §1692d of the FDCPA by engaging in
21 conduct the natural consequence of which is to harass, oppress, or
22 abuse any person in connection with the collection of a debt.
- 23
24 b. A debt collector violates §1692d(5) of the FDCPA by causing a
25 telephone to ring or engaging any person in telephone conversation
repeatedly or continuously with intent to annoy, abuse, or harass any

1 person at the called number.

- 2 c. Here, Defendant violated §§1692d and 1692d(5) of the FDCPA by
3 calling Plaintiff, on average, one (1) to two (2) times a day, causing
4 her to receive more than twenty (20) collection calls a month, with the
5 intent of harassing Plaintiff into paying the alleged debt.
6

7 **COUNT II**

- 8
9 a. A debt collector violates §1692e of the FDCPA by using false,
10 deceptive or misleading representations or means in connection with
11 the collection of any debt.
12
13 b. A debt collector violates §1692e(2)(A) of the FDCPA by making false
14 representations regarding the character, amount, or legal status of any
15 debt.
16
17 c. A debt collector violates §1692e(4) of the FDCPA by representing or
18 implicating that nonpayment of any debt will result in the arrest or
19 imprisonment of any person or the seizure, garnishment, attachment, or
20 sale of any property or wages of any person unless such action is
21 lawful and the debt collector or creditor intends to take such action.
22
23 d. A debt collector violates §1692e(7) of the FDCPA by falsely
24 representing or implying that the consumer committed a crime or other
25 conduct in order to disgrace the consumer.

1 e. Here, Defendant violated §§1692e, 1692e(2)(A), 1692(4) and 1692(7)
2 of the FDCPA when it implied it had a judgment against Plaintiff,
3 when it threatened to garnish Plaintiff's wages, and when it threatened
4 to report Plaintiff to the District Attorney if she failed to make
5 payment on the debt.
6

7 **COUNT III**
8

9 a. A debt collector violates §1692g(a) of the FDCPA by failing to send
10 to the consumer, within five days after its initial communication with
11 a consumer in connection with the collection of a debt, a written
12 notice containing: (1) the amount of the debt; (2) the name of the
13 creditor to whom the debt is owed; (3) a statement that unless the
14 consumer, within thirty days after receipt of the notice, disputes the
15 validity of the debt, or any portion thereof, the debt will be assumed
16 to be valid by the debt collector; (4) a statement that if the consumer
17 notifies the debt collector in writing within the thirty-day period that
18 the debt, or any portion thereof, is disputed, the debt collector will
19 obtain verification of the debt or a copy of a judgment against the
20 consumer and a copy of such verification or judgment will be mailed
21 to the consumer by the debt collector; and (5) a statement that, upon
22 the consumer's written request within the thirty-day period, the debt
23
24
25

1 collector will provide the consumer with the name and address of the
2 original creditor, if different from the current creditor.

- 3
4 b. Here, Defendant violated §1692g of the FDCPA by failing to send
5 written notification, within five (5) days after its initial
6 communication with Plaintiff, advising Plaintiff of her rights to
7 dispute the debt or request verification of the debt or providing her
8 with the name of the original creditor and the amount of the debt.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, JAMIE COPE, respectfully prays for a judgment
12 as follows:

- 13
14 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
15
16 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
17 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
18
19 c. All reasonable attorneys' fees, witness fees, court costs and other
20 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. §
21 1693k(a)(3); and
22
23 d. Any other relief deemed appropriate by this Honorable Court.

24 **DEMAND FOR JURY TRIAL**

25 PLEASE TAKE NOTICE that Plaintiff, JAMIE COPE, demands a jury trial
in this case.

1
2 DATED: 03/28/13
3

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

By: Tara L. Patterson

Tara L. Patterson

PA Attorney ID No. 88343

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888 ext. 103

Fax: (877) 788-2864

Email: tpatterson@creditlaw.com